

AGREEMENT FOR USE OF YORKTOWN PIER FOR  
EMBARKATION AND DISEMBARKATION OF  
PASSENGERS FROM CRUISE SHIPS

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between the COUNTY OF YORK, VIRGINIA (the County), party of the first part; the INDUSTRIAL DEVELOPMENT AUTHORITY OF YORK COUNTY, VIRGINIA (the IDA), party of the second part; YORKTOWN CRUISES, INC., a Virginia corporation; ERIN KAY CHARTERS, INC., a Virginia corporation; and W M & C M, INC., a Virginia corporation, t/a SEA SPRAY CHARTERS, parties of the third part, hereinafter referred to individually as "the Company" or collectively as "the Companies."

W I T N E S S E T H :

WHEREAS, the Companies desire to operate cruise ship services, fishing trips, dinner cruises and sightseeing cruises, hereinafter referred to as "river cruises" with a passenger embarkation and disembarkation point in Yorktown, Virginia, and desire to use the existing cofferdam pier in Yorktown owned and operated by the County for the purpose of loading and offloading passengers; and

WHEREAS, the County recognizes the benefits which will accrue to the County of York because of the operation of river cruises in Yorktown, Virginia, and finds this Agreement to be in the public interest and for a public purpose.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

1.     Use of Pier Granted

The County hereby grants to the Companies the nonexclusive right, beginning on May 1, 2004, to embark and to disembark passengers at the Yorktown Cofferdam Pier, hereinafter "the Pier," (such term to also include the ramp and floating dock described in paragraph 5, below) also sometimes known as the Cofferdam Pier, being a wooden pier approximately 480' in length at the foot of Comte de Grasse Street, and owned by the County, in accordance with the terms and conditions set out herein.

2.     Permissible Method of Embarkation/Disembarkation

The Companies shall use the Pier only as a landing point for river cruises, tenders or other small craft for the purpose of loading and offloading cruise ship passengers from vessels anchored in the York River. Moreover, the tender boats or other small craft used for ferrying passengers between the Pier and the large cruise

ship shall be allowed to tie up to the Pier only during such times as passengers are actively loading or offloading, and shall not be allowed to remain tied to the Pier between scheduled cruises, or during the interval between the beginning and end of any cruise or outing.

3. Rent

The Companies shall each pay to the County as rent the sum of Fifty Cents (50¢) for each paying customer of any Company who embarks or disembarks from the Pier to or from a cruise ship operated by any Company, or for any passenger of another vessel offering river cruises to whom any Company has provided embarkation or disembarkation services to or from the Pier for a fee, such rent to be assessed against the Companies only once for each round trip for any passenger. Such rent shall be monthly, no later than the 15<sup>th</sup> day of the following month. Nonetheless, the Companies guarantee to pay to the County a minimum rent of Five Thousand and 00/100 Dollars (\$5,000.00) for the term of this Agreement. The obligation of the Companies to pay the amount set out in this paragraph shall be joint and several. The Companies shall each keep accurate daily records showing the numbers of passengers who have embarked or disembarked from the Pier, which records shall be available for inspection by the County at any time during normal business hours (being 8:15 a.m. until 5:00 p.m., Monday through Friday) and shall provide copies of such records to the County upon request.

4. Term

The term of this Agreement shall begin as of the date on which the York County Board of Supervisors approves this Agreement pursuant to Code of Virginia § 15.2-1800, and all three Companies have executed this Agreement, and shall terminate as of midnight, April 30, 2005.

5. Improvements to the Pier

The parties acknowledge that the Pier, in its current condition, is not suitable for use for the embarkation or disembarkation of passengers. The parties agree that prior to its use as described herein, the Pier shall be improved as follows:

(a) The County shall purchase a floating dock having approximately 858 square feet in surface area, and dimensions of approximately 13 ft. by 66 ft. and suitable for temporary use for the loading and offloading of passengers. The County shall use best efforts to have the floating dock purchased and ready for installation no later than May 1, 2004, but the County shall not be deemed in default of this Agreement by virtue of the failure of the County to have the dock purchased and ready for installation by such date. Nonetheless, the Companies may terminate this

Agreement in the event that the floating dock is not made available by June 1, 2004. The floating dock shall be installed and anchored by the Companies at their own cost, in accordance with installation and anchoring plans to be approved by the County. The Companies shall secure at their own cost all federal, state and local permits and licenses required for the installation and anchoring of the dock, and shall guarantee and hold harmless the County, its officers, agents and employees from any and all liability arising from a failure to secure or to fully comply with the terms and conditions of any such permit or license or license.

(b) The Companies shall construct and install at their own cost a ramp connecting the floating dock with the Pier in accordance with plans to be submitted to and approved by the County prior to the beginning of any construction. The IDA shall provide the Companies with a grant in the amount of up to Ten Thousand and 00/100 Dollars (\$10,000.00) to be used for the sole purpose of acquiring the ramp. The ramp shall be constructed in such a manner that it shall be detachable from the Pier and from the floating dock and removed for safe storage in the event of a hurricane or other severe weather. During the term of this Agreement, the ramp shall belong to the Companies, but shall become the property of the County upon the termination of this Agreement. The Companies shall apply for, and obtain at their own cost, all necessary federal, state or local permits or licenses for the construction and installation of the ramp, including without limitation, a County building permit, and shall guarantee and hold harmless the County, its officers, agents and employees from any liability arising out of a failure to secure or to fully comply with the terms and conditions of any such permit or license.

(c) Any other improvements or alterations to the Pier made at the request of the Companies shall be made only subject to County approval, and at the sole cost of the Companies, and any such improvements and modifications shall belong to the County.

(d) As used herein, the term "Pier" shall include the ramp and the floating dock as described in this paragraph.

#### 6. Compliance with Americans with Disabilities Act

Neither the County nor the IDA makes any representation that the Pier is or shall be compliant in all respects with the Americans with Disabilities Act or with Chapter 9 of Title 51.5 of the code of Virginia, or any other law respecting discrimination against persons with disabilities. The Companies all agree, jointly and severally, to guarantee and hold harmless the County and the IDA from any liability arising under the ADA or the referenced sections of the Code of Virginia, or any similar law regarding the rights of disabled persons by virtue of the noncompliance with such laws of the Pier. In the event that a court of competent jurisdiction

determines that the use of the Pier as described herein constitutes a violation of any such law, then the Companies shall either remedy such violation, or in the event that such violation is not remedied, then either the County or the IDA may declare this Agreement terminated.

7. Limitations on Companies' Use of Pier

(a) The Companies shall not offload trash, load supplies, equipment, food or water, fuel, or pump sewage over the Pier.

(b) The Companies shall not use the Pier to originate any activity other than river cruises without prior written approval from the County.

(c) The Companies shall comply with and conform to all federal, state and local laws and regulations relating to the condition, use or occupancy of the Pier throughout the entire term of this Agreement. Said regulations shall include without limitation the Public Areas Ordinance set out in Chapter 17 of the Code of the County of York.

(d) The Companies shall assume total responsibility for properly berthing vessels.

(e) The Companies shall prohibit their patrons from swimming, diving, fishing, or crabbing, from the Pier.

(f) The Companies are prohibited from discharging bilge fluid or raw sewage while docked or while enclosed in the York River.

(g) The Companies are prohibited from performing major maintenance, painting, or repair of any vessel while docked, pursuant to this Agreement, without written permission from the County.

(h) Advertising, informational and directional signs may be installed and maintained by the Companies on the Pier subsequent to and consistent with written approval of the County if in conformance with the County's zoning regulations.

(i) The Companies shall not set up a stand or other structure on the pier, except with prior written permission of the County.

8. Limitations on County's Use of Pier

(a) During the term of this Agreement, the County shall not allow the public to fish from the Pier.

(b) The County may allow other vessels, including but not limited to commercial cruises or charter fishing operations, to utilize the Pier for the embarkation or disembarkation of passengers, in consultation however with the Companies, and shall not allow any other person or entity to utilize the Pier in such a manner as will interfere with the business operations of the Companies. The County shall not be obligated to charge rent of any such other vessel for use of the Pier, but shall take no action to interfere with any contract between any Company and the owners or operators of any such other vessel by which any Company may ferry the passengers of the other vessel to and from the Pier for embarkation and disembarkation, except for the County's right to collect rent from the Companies by virtue of such activities as provided in paragraph 3, above.

9. Utilities

No utilities shall be supplied to the Pier by the County or the IDA. The Companies may supply such utilities only with the written approval of the County, and all such utilities shall be provided at the sole cost of the Companies.

10. Indemnity and Insurance

The Companies shall indemnify and hold harmless the County and its employees, agents, and officials from and against any and all loss, cost, damage, expense and liability, including without limitation statutory liability and liability under Workers' Compensation Law, in connection with claims for damages as a result of injury or death of any person or property damage to any property arising out of the Companies' use of the Pier sustained by the Companies, their partners, agents, employees, passengers, invitees, contractors, subcontractors, any and all sublessees, their partners, agents, and employees, or any other person or legal entity regardless and irrespective of the cause of such claims for damages, except if caused by the negligence of County.

The Companies shall, at their sole cost through the time that this Agreement remains in force, each maintain the following insurance:

(a) Comprehensive general liability insurance of \$3,000,000 single limit coverage applicable to bodily injury and property damage, which insurance shall contain a special endorsement recognizing and insuring against any liability accruing to the County. Said general liability insurance shall provide coverage for the Pier, the

ramp, and the floating dock during the period such may be used by the Companies. Each Company shall furnish the County with a certificate from an insurer evidencing such insurance. The Companies shall also provide, or cause their insurer to provide, the County with at least thirty (30) days notice of cancellation of such insurance.

(b) Protection and indemnity insurance coverage including injury to crew and U. S. Longshoremen and Harborworkers Act Endorsement with a limit of not less than \$1,000,000 per occurrence.

(c) Wreck removal insurance to indemnify the County if any vessel should sink or become awash, and a certificate of insurance evidencing same shall be filed with the County.

(d) This Agreement shall not become effective until such time as each of the Companies shall have filed with the County a certificate of insurance evidencing that the required insurance has been obtained, and such certificate is approved by the County. This Agreement shall terminate if such insurance is terminated.

#### 11. Destruction of Improvements

In the event of total or partial destruction of the Pier, the County and the Companies each shall have the option, in their sole discretion, to rebuild and restore the same to the condition prior to such destruction, in which case any available insurance proceeds shall be applied to such rebuilding and restoration.

In the event the County or the Companies shall not so rebuild or restore the same within a reasonable time after such destruction, the County may, at its option, terminate this Agreement. In the event of any such termination, the interest of the Companies under this Agreement shall terminate, and the County shall not be financially responsible for any loss incurred by any of the Companies.

#### 12. General Provisions

Time is of the essence in this Agreement and each provision thereof.

If any term, covenant, condition, or provision of this Agreement is held by any court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in force and effect, and shall in no way be affected, impaired, or invalidated unless the County or the Companies finds performance impossible.

This document contains the entire agreement with respect to matters covered by this Agreement. It is not subject to modification except in writing.

All rent and other sums payable to the County shall be made payable and given to the County at:

Treasurer of York County  
c/o Office of Economic Development  
P. O. Box 532  
Yorktown, Virginia 23690

All notices, demands, or requests from any of the Companies to the County shall be given to the County at:

County of York  
c/o Office of Economic Development  
P. O. Box 532  
Yorktown, Virginia 23690

The Companies shall at all times maintain the premises free from any and all liens by reason of activities of any of the Companies and upon the premises authorized through this Agreement.

All notices, demands, or requests from the County to any of the Companies shall be given to the Companies at:

Mr. William Mershon  
Yorktown Cruises, Inc.  
4039 Ironbound Road  
Williamsburg, VA 23188

Each party shall have the right, from time to time, to designate a different address by notice given in conformity with this section.

No consent, agreement or approval required hereunder shall be unreasonably withheld.

### 13. Taxes.

Each Company shall pay all lawful taxes and assessments assessed against it during the term of this Agreement by the Federal, State or County governments. Each Company shall take any action necessary for it to pay business license and other applicable taxes to York County. Each Company shall register its vessel or vessels so

as to enable the County to assess such property taxes as may be levied against such vessels by local governments within the Commonwealth of Virginia. If it leases any vessel, such vessel shall also be registered so as to enable the County to assess property taxes on it.

14. Assignments.

The Companies shall not at any time or in any manner, either directly or indirectly, assign or encumber this Agreement or any interests herein, without the prior written concurrence of the County, which concurrence shall not be withheld unreasonably.

15. Bankruptcy, insolvency, or cessation of business of the Companies.

The following shall be deemed to constitute a default of this Agreement by any Company:

(a) A petition in bankruptcy filed by or against any of the Companies which remains undischarged for a period of ninety (90) days after it is filed.

(b) A petition or answer filed by or against any of the Companies seeking a reorganization, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act.

(c) Adjudication of any of the Companies as a bankrupt or insolvent, or insolvency in the bankruptcy equity sense.

(d) An assignment of all or substantially all of the assets of any of the Companies for the benefit of creditors.

(e) A proceeding by or against any of the Companies for the appointment of a trustee, receiver, conservator, or liquidator of lessee with respect to all or substantially all of the assets of any of the Companies.

(f) A proceeding by or against any of the companies for their dissolution or liquidation, or the taking of possession of their assets by any governmental authority in connection with any dissolution or liquidation; or

(g) The taking by any person of the leasehold created by this Agreement, or any part of the leasehold, or execution, attachment, or other process of law or equity against any of the Companies.

On the occurrence of any default described in this section, the County shall give all of the Companies notice of the default. If the default is not corrected within thirty (30) days after date of the notice, the County may, in addition to any other remedy or right given under this Agreement or by law, give notice to the Companies that this Agreement shall terminate on the date specified in the notice, which date shall not be earlier than thirty (30) days after the giving of the notice.

IN WITNESS WHEREOF, the undersigned parties have hereunto caused these presents to be executed by their duly authorized officers.

COUNTY OF YORK, VIRGINIA

By \_\_\_\_\_  
County Administrator

Approved as to form:

\_\_\_\_\_  
County Attorney

YORKTOWN CRUISES, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

ERIN KAY CHARTERS, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

W M & C M, INC., t/a SEA SPRAY CHARTERS

By \_\_\_\_\_

Title \_\_\_\_\_

